



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

JERRY LEWIS BEY,

Petitioner,

vs.

JOHN LAMANNA, Warden

Respondent.

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CIVIL ACTION NO. 3:05-1344-HFF-JRM

ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE MAGISTRATE JUDGE AND DISMISSING THE ACTION *WITHOUT PREJUDICE*

I. INTRODUCTION

This case was filed as Section 2241 action. Petitioner is proceeding *pro se*. The matter is before the Court for review of the United States Magistrate Judge's report and recommendation (report) in which he suggests that the petition for writ of *habeas corpus* be dismissed *without prejudice* and without requiring Respondent to file a return. The report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 DSC.

II. THE REPORT

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo*

determination of those portions of the report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

Magistrate Judge Joseph R. McCrorey filed his report on May 24, 2005. Plaintiff filed his objections to the report on June 6, 2005, and, on June 9, 2005, filed an amended objection. The Court has reviewed Petitioner's objections, but finds them to be without merit. Simply stated, Petitioner raises Section 2255, not Section 2241, arguments in his petition. Therefore, for the reasons stated in the Report, the Court will dismiss this action *without prejudice*.

IV. CONCLUSION

After a thorough review of the Report and the record in this case pursuant to the standards set forth above, the Court overrules Petitioner's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that the petition for writ of *habeas corpus* must be **DISMISSED** *without prejudice* and without requiring Respondent to file a return.

IT IS SO ORDERED.

Signed this 13th day of January, 2006, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has a right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.